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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1975

NO. 76-309

TRACY SIDLE, Appellant

-vs-

WILLIAM C. MAJORS, Appellee

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No.

TRACY SIDLE, Plaintiff-Appellant,

-vs-

WILLIAM C. MAJORS, Defendant-Appellee.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The appellant, Tracy Sidle, respectfully prays that a writ of certiorari issue to review the judgment and the opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on June 1, 1976.

OPINION BELOW

The Opinion of the United States Court of Appeals for the Seventh Circuit is unreported. A decision of the United States District Court for the Southern District of Indiana, Evansville Division, which entered Findings of Fact and Conclusions of Law, holding that the 1929 Indiana Guest Act, as amended, Indiana Code, Section 9-3-3-1, Burns 1973, 47-1021, required that Summary Judgment be entered against plaintiff on Count I of her claim. A copy of the Opinion of the United

States Court of Appeals for the Seventh Circuit appears as Appendix A.

JURISDICTION

Appellant seeks to have the Opinion of the United States Court of Appeals for the Seventh Circuit sustaining the constitutionality of the 1929 Indiana Guest Act as amended, Indiana Code, Section 9-3-3-1, Burns 1973, 47-1021, reversed. The Judgment of the United States Court of Appeals for the Seventh Circuit was entered on June 1, 1976. Notice of Appeal was filed on the 24th day of August, 1976. Jurisdiction in the Supreme Court of the United States to review this decision for direct appeal is conferred by Title 28, U. S. Code Annotated, Section 1254(1) and 2101(c).

THE STATUTE INVOLVED

Indiana Code, Section 9-3-3-1, Burns 1973, 47-1021, provides:

> 9-3-3-1 (47-1031). *Guest of owner of operator–Right to damages.* -The owner, operator, or person responsible for the operation of a motor vehicle shall not be liable for loss or damage arising from injuries to or death of a guest, while being transported without payment therefor, in or upon such motor vehicle, resulting from the operation thereof, unless such injuries or death are caused by the wanton or wilful misconduct of such operator, owner, or person responsible for the operation of such motor vehicle. (Acts 1929, ch. 201, § 1, p. 679; 1937, ch. 259, § 1, p. 1229.)

QUESTIONS PRESENTED

Whether the Indiana guest statute, Indiana Code, Section 9-3-3-1, Burns 1973, 47-1021, is unconstitutional in that it

violates the equal protection guarantee of the Fourteenth Amendment of the United States Constitution in that it arbitrarily discriminates between different classes of guests, between subclasses of guests, between guests and a guest's property, and between paying automobile guests and all other passengers.

STATEMENT OF THE CASE

This diversity action was commenced by Tracy Sidle, plaintiff-appellant, on December 1, 1973, to recover for serious personal injuries she suffered while a passenger in a negligently driven automobile of the defendant-appellee, William C. Majors, while she was attending homecoming ceremonies at Vincennes University, at Vincennes, Indiana. While in the company of her date, Woody Klepfer, she met the defendant and Robert Kautzman. The four decided to visit the home of Robert Henson, south of Vincennes. Tracy rode with William C. Majors; the other two drove in a separate car. Tracy had never met Mr. Majors before this evening; and he had extended the invitation to Tracy.

The defendant was driving his small sports car at approximately 55 to 65 M.P.H. on a narrow, curvy, rural, blacktop road. Tracy warned the defendant that he should slow down since there were bad curves ahead. Without diminishing his speed after the warning, he spun out on a curve and they slammed into a tree. The plaintiff was knocked unconscious by the accident and suffered a severely comminuted compound fracture of the right distal humerous, a pelvic fracture, bruised ribs and multiple lacerations. Since the accident, she has regained only twenty degrees of flexion and extension of her elbow. She has suffered a severe, substantial and permanent functional impairment of her right arm. There is a very real possibility of eventual degeneration changes or even traumatic degeneration arthritis of the elbow owing to this injury.

At the District Court level, the Honorable Cale J. Holder

sustained the defendant's motion for summary judgment as to Count I of plaintiff's complaint, and entered Findings of Fact and Conclusions of Law. (App. 9-11). He found: That the defendant invited plaintiff to ride with him, and plaintiff accepted the invitation; (Find. 4), that there was no payment or promise to pay for the transporation; (Find. 5), he thereupon concluded that the plaintiff was a guest passenger and that the Indiana Guest Act is applicable to this case and the law is with the defendant and against the plaintiff; (Conc. 2, 3, 4). Thereafter, the Court, pursuant to the procedure set forth in F.R.C.P. 54(b), expressly entered judgment against the plaintiff on Count I and certified that there was no just reason for delay of this appeal. (App. 11). The Seventh Circuit Court of Appeals affirmed the District Court's judgment.

Plaintiff challenges the constitutionality of the Indiana Guest Act, Acts 1929, Ch. 201 § 1, p. 679 as amended 1937, § 1, p. 1229; I. C. 9-3-3-1; § 47-1031 (Burns Repl. 1965) (hereinafter cited as the "Guest Act"), under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

REASONS FOR GRANTING THE WRIT

Serious and important constitutional questions concerning the administration of automobile accident compensation law throughout the fifty states are posed by this petition. Admittedly, this Court could simply rely upon *Cannon v. Oviatt* 419 U. S. 810, and not read any further into this Petition. However, such a result would be wrong and unfair to the appellant herein and the thousands of passengers negligently injured in automobile accidents yearly.

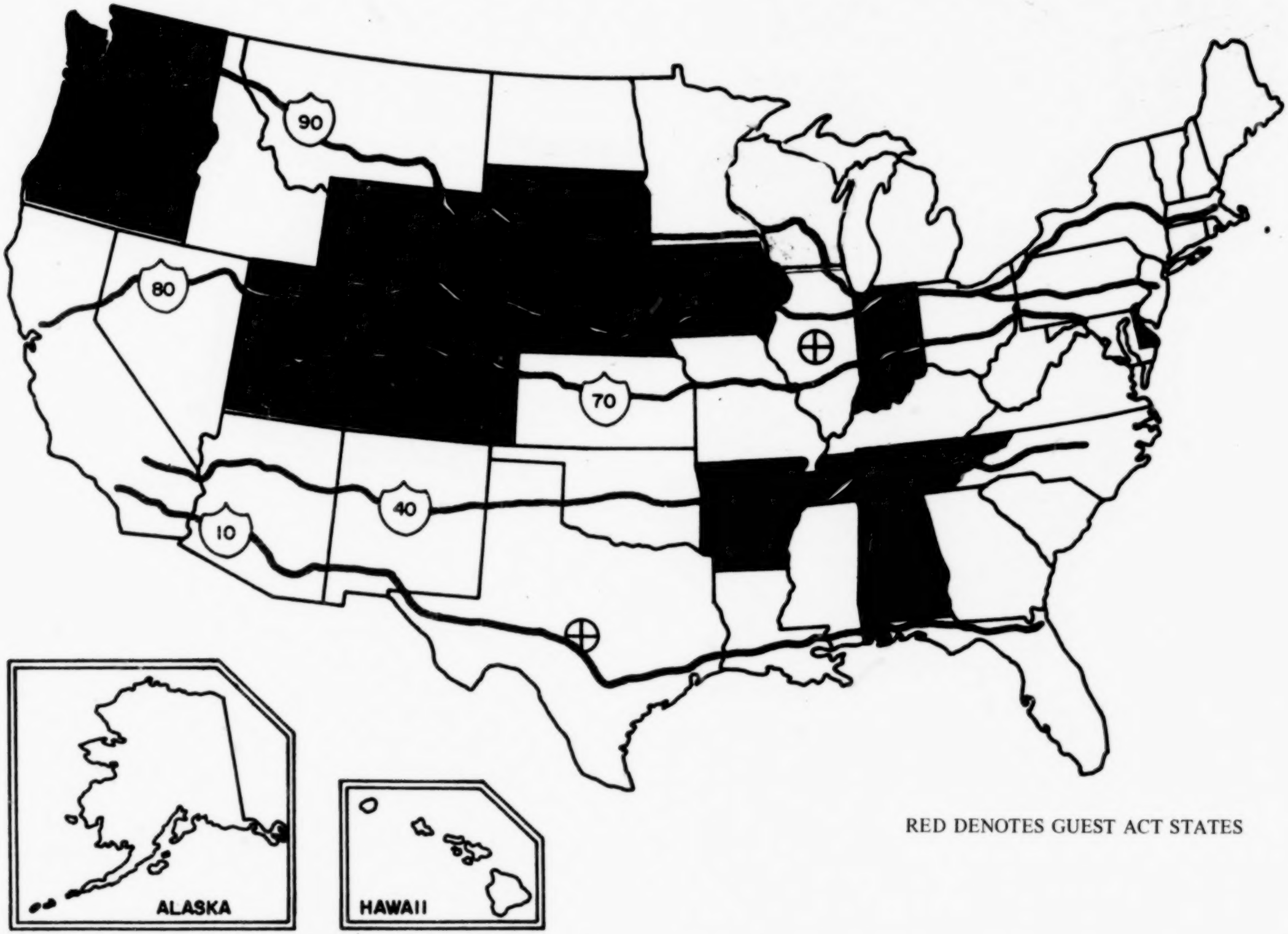
Significantly, most of the motoring public is completely unaware of the guest act strictures. This fact, coupled with the different treatment of guests throughout the fifty states,

demonstrates the dangerousness of the guest act.

On page 6 of this brief, the fold-out map of the United States graphically demonstrates the inequities that result from Guest Acts across these United States. The eastern United States except for Delaware is free of any guest acts while the mid-west suffers the most from the application of guest acts. If one were to travel from east to west on the numerically numbered federally funded Interstate Highways, the liability of a host towards one's guest would vacillate between the duty of reasonable care in those states which are colored white to the wilful and wanton misconduct standards of those states colored red. Merely traveling a foot into an adjoining state would greatly change the standard of conduct even though one remained on Interstate Highways. An examination of the map further reveals that a negligently injured passenger is afforded the greatest protection while traveling on Interstate Highway #10 and the least protection while traveling on the northern Interstate Highway routes.

Moreover, the standard would fluctuate depending whether the state, such as Utah, had a guest act and a threshold no-fault insurance statute. That is, if the passenger was injured seriously in Utah, he or she would be treated as a guest. If the passenger suffered only minor injuries, then the guest relationship would be irrelevant. Cross-country travel is today accepted and commonplace, unlike the situation existing at the time of *Silver*, 280 U.S. 117 (1929), when automobile travel was much more limited. However, the inconsistencies among the states on the quest act question exposes many unknowing Americans to the situation wherein they must pay the loss for negligently inflicted injuries merely because of the happenstance of where they were injured.

There are other inequities. If Tracy had been the passenger in another vehicle, if she had been an innocent bystander, if she had been injured before or after she entered the car, fate would not have required this petition. However,



RED DENOTES GUEST ACT STATES

⊕ ILLINOIS : GUEST ACT APPLIES ONLY TO HITCHIKERS

⊕ TEXAS : GUEST ACT APPLIES ONLY TO THOSE WITHIN SECOND DEGREE OR CONSENQUITY

because of the Guest Act, her fate becomes that much more intolerable. It is ludicrous to believe that she can recover in negligence in all the situations described above, but is foreclosed a remedy for the insignificant reason that she was a passenger inside the door of an automobile.

The Seventh Circuit Court of Appeals, throughout its opinion, below persuasively argued that the guest legislation was unconstitutional and strongly suggested this appeal:

> "although we consider the foregoing considerations to be persuasive that this guest statute contravenes the Equal Protection Clause, under decisions of the Supreme Court of the United States, we are required to affirm the judgment below.
>
> ". . . .Therefore, despite our doubts about the current validity of the rule in *Silver v. Silver, supra*, we are obligated to affirm.
>
> ". . . .The frequency with which the question has arisen and the disagreement among the courts attest to the importance of the issue, its difficulty and the need for conclusive resolution so that the present viability of *Silver v. Silver* can be authoritatively determined.

Since the decision of this Court in *Silver v. Silver*, 280 U.S. 117 (1929), wherein the Connecticut Guest Act was upheld, the automobile has become the normal means of transportation in the United States for many millions of Americans, and insurance law has caused a complete revampment of American society. Unlike the situation existing in 1927, when *Silver* was decided, today most drivers have liability insurance; giving a friend a ride is no longer thought of as a mere treat, but a commonplace and accepted occurrence.

As compared with the situation existing at the time of *Silver*, when only 20% of Americans were insured and when the

automobile was still unique, drivers are now almost universally insured with liability insurance. Further changes have been the adoption by many states of no-fault insurance, the lessened likelihood of surprise in trials due to the adoption of pre-trial discovery devices, the greater experience with automobile Tort litigation, and the broadened use of cross-examination. Time has altered the underpinnings for the logic of Guest Act Legislation and the decision of *Silver*. *Silver* considered only the classification of gratuitous passengers in automobiles against those in other classes of vehicles, and this was when the automobile was quite unique. The Court did not consider whether the classifications between passengers and other vehicle passengers, between paying and non-paying automobile passengers, and between different subclasses of automobile guests were permissible. Moreover, since *Silver*, a new formulation of equal protection has been developed by this Court. Thus, whether a State must have only a rational basis upon which to predicate its classification or whether the State must demonstrate a compelling interest to sustain the classification is undecided. See, Gunther, *The Supreme Court, 1971 Term - Forward: In Search of Evolving Doctrines of a Changing Court: A Model For A Newer Equal Protection*, 86 Harv. L.R. 1, 1972; Nowak, *Realigning the Standards of Review Under the Equal Protection Guarantee-Prohibited, Neutral, and Permissive Classifications*, 62 Geo. L.J. 1071, 1072, 1075 (1974).

A further substantial justification exists for this Court to grant the writ herein: the states are hopelessly dead-locked on this question. Eight states have recently found guest acts to be unconstitutional. *Brown v. Merlo*, 8 Cal. 3d 855, 106 Cal. Rptr. 388, 506 P.2d 212 (1973); *Thompson v. Hagan*, 96 Idaho 19, 523 P.2d 1365 (1965); *Henry v. Bauder*, 213 Kan. 715, 518 P.2d 362 (1974), *Manistee Bank & Trust Co. v. McGowan*, 394 Mich. 655, 232 N.W. 2d 636 (1975); *Laakonen v. Eighth Judicial Dist. Court*, 538 P.2d 574 (Nev. 1975); *McGeehan v. Bunch*, 540 P.2d 238 (N.M. 1975); *Johnson v. Hassett*, 217 N.W. 2d 771 (N.D. 1974); and *Primes v. Tyler*, 335 N.W. 2d 373 (Ohio 1974). Other states have indicated, as has the Arkansas Supreme Court, *White v. Hughes*, 257 Ark. 627, 519 S.W. 2d 70, and the Delaware Supreme Court, *Justice v. Gatchell*, 325 A.2d 97 (Del. 1974), that the guest statutes will be held constitutional pending a review of *Silver* by this Court. Kentucky has found it unconstitutional on other grounds. *Ludwig v. Johnson*, 243 Ky. 533, 49 S.W. 2d 347 (1932). Other states have found it constitutional. *Beasley v. Bozeman*, 315 So. 2d 570 (Ala. 1965); *Richardson v. Hansen*, 527 P.2d 536 (Colo. 1974); *Keasling v. Thompson*, 217 N.W. 2d 687 (Iowa 1974); *Botsch v. Reisdorff*, 193 Neb. 165, 226 N.W. 2d 121 (1975); *Tisko v. Harrison*, 500 S.W. 2d 565, (Tex. Cir. App. 1973); *Behrno v. Burke*, 229 N.W. 2d 86 (S.D. 1975); *Duerst v. Limbocher*, 525 P. 2d 99 (Or. 1974); *Cannon v. Oviatt*, 520 P. 2d 882 (Utah 1974); 339 N.E. 2d 191 (1976); *White v. Hughes, supra*. This split alone supports the conclusion that the matter is substantial and should be resolved by this Court.

Two traditional rationalizations have been put forward to justify the guest statute by commentators and Courts:

1. The Guest Act is said to promote hospitality by insulating hosts from lawsuits instituted by "ungrateful" guests; and,

2. That the statute serves to eliminate the possibility of collusive lawsuits.

Neither of these reasons provides a rational basis for the Guest Statute's classification in 1976.

The hospitality rationale has been rejected in the recent cases which have struck down guest acts. First, as the Court in *Thompson v. Hagan*, (Idaho S.Ct. 1974), 523 P.2d 1365, stated:

> "The explanation may have had validity in 1931 when the guest statute was first enacted, but

today, the widespread incidence of liability insurance has destroyed the basis for the argument. Because of liability insurance, the statute appears to result in the protection of insurance companies, not generous hosts from lawsuits by negligently injured guests." *Id.* at 1368.

The Court in *Brown v. Merlo* remarked that:

"In plain language, there is simply no notion of 'ingratitude in suing your host's insurer'." 506 P.2d 212 at 221.

Indiana law requires proof of financial responsibility in the amount of Fifteen Thousand ($15.000.00) Dollars because of bodily injury to two or more persons. I.C. 9-2-1-15. It has been documented that over 85% of all Americans carry liability insurance. U.S. Department of Transportation, *Driver Behavior & Accident Involvement: Implications for Tort Liability*, at 201-05 (1970). 93.2% of all Hoosier's cars have liability insurance. *A.I.P.S.O. Insurance Facts 1976: A Handbook of Auto Residual Market Facts and Figures* (1976) p. 3; whereas at the time of the passage of most of the Guest Acts only 20% of all Americans were insured. Elsbree & Roberts, *Compulsory Insurance Against Motor Vehicle Accidents* 76 U.Pa. L.Rev. 690, 691 (1928). The reason many Americans carry such insurance is to protect their guests, their family and themselves. The societal trend is towards the acceptance of the risk - spreading concept and away from laws protecting special interests from liability. The economic depression played a big role in the acceptance of a hospitality rationale. See, Note, 59 Cornell Law Review 659 at 664. However, economic conditions today are a far cry from the situation existing during the depression.

The second justification for Guest Acts is that they prevent collusive lawsuits by the host driver and passenger against insurance companies. The Court in *Thompson v. Hagan*, (Idaho S. Ct. 1974), 523 P.2d 1365, demonstrated the irrationality of this contention when it argued:

"If, as the rationale suggests, a host will agree to fraudulently state that he was negligent, there is nothing preventing him from stating that he was grossly negligent or intoxicated in order that the guest may recover from the insurer." 523 P.2d at 1369.

Also, nothing prevents them from colluding on the issue of whether there has been payments for the ride.

Moreover, this argument naively ignores the fact that extrinsic evidence can be presented, scientific investigations can be used, expert witnesses can be utilized, and photographs can be introduced to rebut false testimony. Furman, *The Future of the Automobile Guest Statute*, 45 Temple L. Rev. 432 at 438. Furthermore, as the Court in *Brown v. Merlo* pointed out:

"Not only does the guest statute eliminate the great number of valid lawsuits between relatives and close friends - - the vice inherent in the earlier family immunity doctrines - - but, in addition, the provision irrationally (1) permits negligence suits by many who have no less reason to collude than those barred from suing, and (2) eliminates causes of action of many individuals as to whom there is no reasonable likelihood of collusion." 506 P. 2d at 226.

In the facts of this case, Tracy Sidle had only met the defendant that day. How can it be said that there is a likelihood that they will collude against the insurance company? What is to prevent the defendant driver from colluding with the insurance company against the plaintiff?

Several other forms of discrimination are present as a result of the Guest Act Legislation. Persons who do not have automobiles or who are handicapped or are too poor, or for some other reason incapable of driving, are likely the persons most desperately in need of recompense for negligent injuries; but are just the people who find themselves without a remedy.

In many instances the victims are members of the same family. Yet, guest statutes preclude any recovery and tend to discriminate against families that travel together. As has been shown above, where the accident occurred would very likely determine whether the member of the family who was injured could recover, thus discriminating ironically against one's loved ones.

Even more significant is the fact that the Guest Act impedes the fundamental right of a citizen to travel. As is vividly shown by Exhibit A, individuals who travel cross-country may very well be deterred therefrom because of the Guest Act. This fundamental interest analysis has never been applied to the Guest Act.

The Seventh Circuit Court of Appeals below has poignantly demonstrated the very real and substantial questions existing in this appeal; the States have split upon this question of the rationality of the Guest Act Legislation. Certainly, the Seventh Circuit's analysis, the conflict between the states, and the total preclusion of any remedy under the Guest Act, all demonstrate that a substantial question is presented and that the instant appeal warrants the full attention by this Court, and that this Court should set the matter for full argument and decision.

CONCLUSION

Time has altered the underpinnings of the Guest Act Legislation. This Court should now deliver the *coup de grace*

to this anachronism. The appellant respectfully suggests that any law which protects negligent drivers and insurance companies and which places the risk of loss upon those who are maimed and injured is irrational and should be abolished.

To a large extent, this petition raises important and significant questions, deserving of more than a perfunctory citation to *Silver* or *Cannon*, both *supra*, the logic which has been eroded with time and which stands as an effective bar to recovery for thousands of negligently injured individuals in this Country.

Indeed, the facts of this case show the irony of the rationalizations offered to support the Guest Act. In the case herein, there is not an iota of evidence to suggest that Tracy Sidle has colluded with the defendant, but all the evidence points to the negligence of the defendant. Why allow the fictions used to support the Guest Acts to control our constitutional analysis?

Do we as a society really want a law which would permit one to say: "I don't have to drive carefully?"

It is respectfully submitted that the District Court's Findings of Facts, Conclusions of Law and Judgment applying the Indiana Guest Act to the facts of this case are erroneous for the reasons hereinabove set out.

Respectfully submitted,

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APPENDIX A

In the

United States Court of Appeals

For the Seventh Circuit

No. 74-1746

TRACY SIDLE,

Plaintiff-Appellant,

v.

WILLIAM C. MAJORS,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Indiana,
Evansville Division—No. EV 73-C-105
CALE J. HOLDER, *Judge*

ARGUED APRIL 16, 1975 — DECIDED JUNE 1, 1976

Before FAIRCHILD, *Chief Judge*, CUMMINGS and SPRECHER, *Circuit Judges.*

CUMMINGS, *Circuit Judge.* In December 1973, plaintiff, a citizen of North Carolina, filed this diversity action against defendant, an Indiana citizen. Plaintiff alleged that at 11:00 p.m. on November 18, 1972, she was an invited passenger in an Opel automobile being driven by defendant on Hart Street Road, three miles south of Vincennes, Indiana. According to Count I of the complaint, the defendant negligently failed to keep his vehicle under control and therefore was unable to negotiate a sharp left curve and drove his car into a telephone pole, causing plaintiff severe injuries; she sought $65,000 in damages. Count II of the complaint alleged that defendant's behavior constituted wanton or wilful misconduct.

In May 1974, the district court entered findings of fact and conclusions of law holding that the 1929 Indiana guest statute, as amended (Ind. Code § 9-3-3-1 (Burns 1973)),[1] required that summary judgment be entered against plaintiff on Count I.[2] Count II, based on defendant's wanton or wilful misconduct, has not yet been tried.

Both in the district court and on appeal, plaintiff challenged the constitutionality of the Indiana Guest Act under Article 1, §§ 12 and 23 of the Indiana Constitution[3] and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Because the Indiana Supreme Court had not passed on the constitutionality of the statute under the Indiana Constitution, after hearing oral argument we certified the following questions to the Indiana Supreme Court in April 1975 pursuant to Rule 15N of the Indiana Rules of Appellate Procedure:

> "1. Does the Indiana Guest Statute contravene Article 1, Section 12 of the Indiana Constitution?
>
> "2. Does said Act contravene Article 1, Section 23 of the Indiana Constitution?"

In an opinion received by us on April 8, 1976, that court answered both certified questions in the negative. 341 N.E.2d 763. Consequently, we need only consider whether the Indiana guest statute violates the Equal Protection Clause of the Fourteenth Amendment.[4]

[1] The Indiana guest statute provides:
"The owner, operator, or person responsible for the operation of a motor vehicle shall not be liable for loss or damage arising from injuries to or death of a guest, while being transported without payment therefor, in or upon such motor vehicle, resulting from the operation thereof, unless such injuries or death are caused by the wanton or wilful misconduct of such operator, owner, or person responsible for the operation of such motor vehicle."

[2] Although summary judgment was only entered for defendant on Count I, the district court certified that there was no just reason for delay and entered final judgment on that count pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

[3] Article 1, § 12, of the Indiana Constitution provides:
"All courts shall be open; and every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay."
Article 1, § 23 of the Indiana Constitution provides:
"*Privileges equal.* The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens."

The statute challenged here discriminates against guests by denying them the right to sue for negligently inflicted bodily injury while affording that right to all non-guest passengers. Because the statutory classification is not inherently suspect (cf. In re *Griffiths*, 413 U.S. 717) and does not impinge fundamental rights (cf. *Memorial Hospital* v. *Maricopa County*, 415 U.S. 250), we need not strictly scrutinize the state purposes sought to be served. In the realm of social and economic regulation, the states are free to experiment and are given great latitude in determining who shall benefit from a particular enactment. *Levy* v. *Louisiana*, 391 U.S. 68, 71; *Dandridge* v. *Williams*, 397 U.S. 471, 485. Nonetheless, statutory classifications violate the Equal Protection Clause if they are not rationally related to "some legitimate, articulated state purpose." *McGinnis* v. *Royster*, 410 U.S. 263, 270; *Weber* v. *Aetna Casualty & Surety Co.*, 406 U.S. 164, 172.

In its opinion responding to our certification, the Indiana Supreme Court stated that the purpose of this statute was to foster "hospitality by insulating generous drivers from lawsuits instituted by ungrateful guests and the elimination of the possibility of collusive lawsuits." 341 N.E.2d at 768. However, as noted in *Brown* v. *Merlo*, 8 Cal.3d 855, 506 P.2d 212 (1973), where the California guest statute was held unconstitutional under the Fourteenth Amendment, widespread liability insurance has eliminated any notion of ingratitude that may have formerly adhered to a suit by a guest against his host. 506 P.2d 221-222. 80 to 85% of Indiana residents carry liability insurance (United States Department of Transportation, *Driver Behavior and Accident Involvement: Implications for Tort Liability*, at 205 (1970)), whereas only 20% of all Americans were insured at the time of the passage of most of the guest statutes. Ellsberre

[4] The plaintiff argued preliminarily that since she was invited to ride by defendant, she was not a guest within the meaning of the Indiana statute. Since it is now settled that an invited automobile passenger is a guest under the Indiana Act, this argument must fail. See *Sidle* v. *Majors*, 341 N.E.2d 763, 774.

and Roberts, *Compulsory Insurance Against Motor Vehicle Accidents*, 76 U.Pa.L.Rev. 690, 691 (1928). Indiana automobile owners have also had the benefit of a compulsory Financial Responsibility Law since 1947 (Ind. Code §9-2-1-15 (Burns 1973)).

Brown also punctured the so-called anti-collusion purpose of a guest statute, for the guest and host can escape the bar of the statute by colluding on the issue of whether the rider provided any compensation for the ride (506 P.2d 226-227) or whether the host was guilty of wilful or wanton misconduct. Such odious perjury, often difficult to disprove, is encouraged by guest statutes. Nor is vexatious litigation avoided, for complaints are readily drafted to meet the statutory requirements. Thus we agree with the California Supreme Court in *Brown* (506 P.2d 225-227) that the relationship between the legitimate goal, the prevention of fraudulent actions, and the remedy, denying guests the right to sue, is so attenuated that it is unreasonable to eliminate causes of action of an entire class of persons merely because an indefinite portion of a designated class may file fraudulent lawsuits. See *Cleveland Board of Education* v. *LaFleur*, 414 U.S. 632, 655-657 (Powell, J. concurring).

One further reason the Indiana Supreme Court advanced in favor of the constitutionality of the guest statute was that otherwise there might be an escalation of automobile liability insurance premiums. But when the Guest Act was enacted in Connecticut in 1927, there was no reduction in automobile premiums, nor was there an increase in the premiums when that statute was repealed ten years later. Note, 42 U.Cinn.L.Rev. 709, 721 (1972). Defendant has not demonstrated that our invalidation of this statute would increase premiums for such insurance.[5]

Although we consider the foregoing considerations to be persuasive that this guest statute contravenes the Equal Protection Clause, under decisions of the Supreme Court

[5] See *Manistee Bank & Trust Co.* v. *McGowan*, 232 N.W.2d 636, 645, n. 59. In note 9 of that opinion, the Michigan Supreme Court has collected an impressive array of critical comments with respect to guest statutes. For further such antipathy, see *Brown* v. *Merlo*, *supra* 506 P.2d at 232, n. 22.

of the United States we are required to affirm the judgment below.

Defendant's chief reliance is upon a 1929 Supreme Court decision where, without much discussion, the Court held that a similar Connecticut statute did not contravene the Equal Protection Clause. *Silver* v. *Silver*, 280 U.S. 117. However, the rule of that case has been so eroded by subsequent decisions (see, *e.g.*, *Vlandis* v. *Kline*, 412 U.S. 441) that it should no longer control under the Equal Protection Clause. *Silver* focused on whether the Connecticut statute could properly apply to motor vehicles as distinguished from other forms of transportation. The opinion did not consider whether the statute discriminated against a class of plaintiffs (280 U.S. at 123) and is therefore distinguishable.

As with the Indiana decision here, the *Silver* ruling relies on the notion that it is unfair to impose liability on the host and the fear that the courts will be inundated with troublesome lawsuits. At that time two factors supported the Supreme Court's decision to defer to the legislature's judgment on these questions. Widespread automobile use was still new and society needed time to develop methods of assessing the cost of the inevitable injuries. When the guest statutes are viewed as an initial attempt to cope with the problem, it was entirely proper for the Court to let the legislature make the decision. However, that is no longer the case. Liability insurance is a means by which the cost is borne by motorists as a class, not the individual driver. Further, experience teaches us that no fewer suits are filed by virtue of such statutes. The premises of *Silver* v. *Silver* being no longer valid in the light of modern authority, we believe that on plenary review the Supreme Court would not hold that *Silver* controls the question before us. See *Brown* v. *Board of Education*, 347 U.S. 483, 493-494.

Subsequent to *Silver*, appellate courts of eight states have declared their respective guest statutes unconstitutional under the federal Equal Protection Clause:[6] *Brown* v. *Merlo*, 8 Cal.3d 855, 506 P.2d 212 (1973); *Henry*

[6] Likewise, various courts have refused to apply other states' guest statutes. See the cases and authorities collected in Supplement to 2 Harper and James, the Law of Torts 47-48.

v. *Brauder*, 213 Kan. 751, 518 P.2d 362 (1974); *Johnson* v. *Hassett*, 217 N.W.2d 771 (N.D. 1974);[7] *Thompson* v. *Hagan*, 96 Idaho 19, 523 P.2d 1365 (1974); *Primes* v. *Tyler*, 43 Ohio St.2d 195, 331 N.E.2d 723 (1975); *Laakonen* v. *The Eighth Judicial District Court*, 538 P.2d 574 (Nev. 1975); *McGeehan* v. *Bunch*, 88 N.M. 305, 540 P.2d 238 (1975); *Manistee Bank & Trust Co.* v. *McGowan*, 396 Mich. 655, 232 N.W.2d 636. Their persuasive reasoning reinforces our belief that *Silver* is no longer to be followed.[8]

Guest statutes were enacted during depression years to help the prevailing economic plight of the insurance companies that lobbied for their passage.[9] No such justification presently exists. Counsel for plaintiff has put it picturesquely: they are "an anachronistic monument to the insurance industry" (Br. 30). Today virtually only insurance companies win protection under such statutes.

The rationale that a guest statute favors hospitality falls here where plaintiff argues that she favored defendant, rather than vice versa, by agreeing to furnish him company as his passenger. The fact that she did not pay defendant is of no critical significance, for if Majors had injured a pedestrian or a guest in another's car, he would be liable for simple negligence. The hospitality rationale is also indefensible when contrasted with the judicial abrogation of interspousal, charitable and governmental immunities in order to provide a remedy for negligently injured persons.

Finally, the statute's lack of a rational basis is demonstrated by its denying automobile guest passengers the

[7] The *Johnson* decision was based on three provisions of the North Dakota Constitution, one of which resembles the federal Equal Protection Clause.

[8] The state courts have not been unanimous. Recently the Supreme Courts of seven states have upheld their guest statutes despite challenges on equal protection grounds. *Behrns* v. *Burke*, 229 N.W.2d 86 (S.D. 1975); *Richardson* v. *Hansen*, 527 P.2d 536 (Colo. 1974); *Duerst* v. *Limbocker*, 525 P.2d 99 (Or. 1974); *Cannon* v. *Oviatt*, 520 P.2d 883 (Utah 1974), appeal dismissed for want of a substantial federal question, 419 U.S. 810; *Keasling* v. *Thompson*, 217 N.W.2d 687 (Iowa 1974); *Justice* v. *Gatchell*, 325 A.2d 97 (Del. 1974); *Delany* v. *Bedame*, 49 Ill. 2d 168 (1971).

[9] *Brown* v. *Merlo*, *supra*, 225.

right to sue their drivers for negligently caused bodily injuries while permitting them to recover for negligently damaged personal effects. Such a statute denies them protection from negligent injuries. We can find no necessary rational relation to a legitimate state interest (*Reed* v. *Reed*, 404 U.S. 71, 75-76) that would require us to sustain the legislation.

Nevertheless a recent Supreme Court decision requires us to reach a contrary result. In *Cannon* v. *Oviatt*, *supra*, the Supreme Court of Utah rejected an equal protection challenge to a guest statute virtually identical to Indiana's. The appeal to the United States Supreme Court presented the question whether the guest statute violated the equal protection clause because it barred recovery for ordinary negligence. See 43 LW 3103. The Court dismissed the appeal for want of a substantial federal question. *Cannon* v. *Oviatt*, 419 U.S. 810. Although that ruling is not a plenary consideration of this significant current topic in tort law, it is an adjudication on the merits. *Hicks* v. *Miranda*, 422 U.S. 332, 344-345. Therefore, despite our doubts about the current validity of the rule in *Silver* v. *Silver*, *supra*, we are obligated to affirm. *Hicks* v. *Miranda*, *supra*, 422 U.S. at 345.

Although we are the first court of appeals to consider the equal protection challenge to a guest statute, the high courts of several states have already grappled with the problem, and the split among them has been noted (*supra* pp. 5-6). Indeed the Supreme Courts of Nevada and New Mexico invalidated their states' guest statutes after the Supreme Court of the United States acted in *Cannon*. See *Laakonen* v. *The Eighth Judicial District Court*, *supra*; *McGeehan* v. *Bunch*, *supra*. The frequency with which the question has arisen and the disagreement among the courts attest to the importance of the issue, its difficulty and the need for conclusive resolution so that the present viability of *Silver* v. *Silver* can be authoritatively determined.

Judgment affirmed.

74-1746 8

FAIRCHILD, *Chief Judge*, concurring. As a matter of social policy, I have long rejected the propositions which underlie an automobile guest statute of the type we are now considering. See *McConville* v. *State Farm Mutual Automobile Insurance Co.*, 15 Wis.2d 374 (1962) (written by me as Justice of the Supreme Court of Wisconsin and changing a judge-made rule of law). I am, therefore, in agreement with the majority's criticism of the stated purposes of the guest statute. However, while I disagree with the choice of policy made by the Indiana Legislature in adopting this statute, I am unable to conclude that the reasons for enacting it are not rationally related to the classifications which the statute creates. A court is required to presume that the grounds for enacting legislation are rational, and I cannot state with the necessary certainty that in this instance the presumption has been overcome.

A true Copy:

Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit

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IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

TRACY SIDLE,	)	
	)	
Plaintiff-Appellant,	)	
	)	
-vs-	)	No. 74-1746
	)	
WILLIAM C. MAJORS,	)	
	)	
Defendant-Appellee.	)	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Tracy Sidle, the Appellant above-named, hereby appeals to the Supreme Court of the United States from the final order of the United States Court of Appeals for the Seventh Circuit, affirming the trial Court's judgment against Appellant in her claim for personal injury, which order of the United States Court of Appeals for the Seventh Circuit was entered herein on the 1st day of June, 1976.

This appeal is taken pursuant to 28 U.S.C. § 1254 (1) and 2101 (c).

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By s/Steve Barber

Counsel for Appellant

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

TRACY SIDLE,	)	
	)	
Plaintiff-Appellant,	)	
	)	
-vs-	)	No. 74-1746
	)	
WILLIAM C. MAJORS,	)	
	)	
Defendant-Appellee.	)	

PROOF OF SERVICE

The undersigned, a member of the Bar of this Court, does hereby represent that on the 24th day of August, 1976, copies of Notice of Appeal were served upon counsel for Defendant-Appellee.

s/Steve Barber

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

EVANSVILLE DIVISION

TRACY SIDLE	)	
	)	
vs.	)	No. EV 73-C-105
	)	
WILLIAM C. MAJORS	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Court on defendant's motion for summary judgment on plaintiff's complaint (Count I) and now the Court having considered plaintiff's complaint filed on December 14, 1973, defendant's answer thereto filed on January 4, 1974, plaintiff's answers to interrogatories filed on March 18, 1974, and the depositions of the plaintiff and defendant taken on March 10, 1974, and having considered the briefs of the respective parties, now enters its

FINDINGS OF FACT

1. The plaintiff is a citizen and resident of the State of North Carolina; the defendant is a citizen and resident of the State of Indiana.

2. That the controversy herein, exclusive of interest and costs, exceeds the sum of Ten Thousand Dollars ($10,000.00).

3. That on November 18, 1972 the plaintiff Tracy Sidle and the defendant William C. Majors were attending the Home Coming activities of Vincennes University and were staying at the Executive Inn in Vincennes, Knox County, Indiana; that sometime prior to 11:00 P.M. the parties and a mutual friend decided to visit a friend who lived off of Hart Street Road on

the south side of Vincennes, Indiana.

4. Upon leaving the Executive Inn the defendant invited the plaintiff to ride in his automobile and the plaintiff accepted the invitation.

5. That neither prior to, nor during the automobile trip in question did the plaintiff promise to pay, nor did she pay, to the defendant any consideration for her transportation.

6. That at the time in question the defendant, William C. Majors, was the owner of a 1972 Opel GT automobile; that upon leaving the Executive Inn on the north side of Vincennes, Indiana the defendant proceeded south and turned onto the Hart Street Road and drove in a southerly direction; that as the defendant was driving south on Hart Street Road he approached a sharp left hand curve and, while passing through said curve, the vehicle went off the travel portion of the road and struck a pole.

7. That as a proximate result of the accident the plaintiff sustained injuries and incurred medical expense.

CONCLUSIONS OF LAW

Upon the facts thus found the Court now enters its conclusions of law as follows:

1. The Court has jurisdiction of the parties and of the subject matter of the action.

2. At the time of the accident the plaintiff, Tracy Sidle, was a guest passenger in the automobile operated by the defendant William C. Majors.

3. The Indiana Guest Statute is applicable to the facts in controversy and governs the conduct of the parties.

4. The law is with the defendant and against the plaintiff on her complaint (Count I). Let judgment be entered accordingly.

29 May 1974
s/Cale J. Holder

Judge, United States District Court

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